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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,189	09/12/2003	Darwin Mitchel Hanks	200310345-1	8310
22879	7590	01/24/2008		
HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400				
			EXAMINER	
			LAMB, CHRISTOPHER RAY	
			ART UNIT	PAPER NUMBER
			2627	
			NOTIFICATION DATE	DELIVERY MODE
			01/24/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/661,189	HANKS ET AL.	
	Examiner	Art Unit	
	Christopher R. Lamb	2627	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 3, 4, 7, 13, 15-21, 25-35, 38-40, 45, 46, 51 and 52.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see note below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/William Korzuch/
SPE, Art Unit 2627

Note 11: Applicant makes several arguments. None are persuasive. Each will be addressed in turn.

Regarding claims 13, 39, and 51:

Applicant argues that the phrase "establish...an absolute reference for radial positioning" renders the claim allowable. Applicant argues that the invention establishes a position that subsequent positioning is referenced to, whereas Black only discloses determining the current location on the disc.

There may be differences between the invention and the disclosure of Black, but Black's disclosure meets a reasonable interpretation of the claim language. The claim requires that the controller "establish...an absolute reference for a radial positioning." Black reads in the transducer signal and uses it to correct the transducer position (column 3, lines 20-40). The correction operation is "a radial positioning." The current position is used to correct the position, and therefore the current position is "an absolute reference" for the correction operation. Therefore Black establishes "an absolute reference for a radial positioning."

Applicant's argument apparently is that their invention differs from Black because it uses the absolute reference position as a single fixed point from which all subsequent positioning is referenced. This may be true, but the claim language is open to the interpretation used to reject the claim as unpatentable over Black, and therefore this argument is not persuasive.

Regarding claims 1 and 26:

Claim 1 recites "sensing, with a stationary detector, a frequency of electromagnetic radiation..." and claim 26 recites "means for sensing electromagnetic radiation with a stationary sensor." The Examiner relied upon the light-sensitive transducer 50 of Black to reject these claim elements. Applicant argues that the "plain fact is that Black's detector/sensor is not stationary -- transducer assembly 12 carrying front mirror 47 moves radially along the disc during sensing operations."

Black's apparatus may have elements that are not stationary: however, the element in the apparatus that actually, physically, senses the electromagnetic radiation is the light-sensitive transducer 50, and that transducer is stationary. The front mirror directs the light to the transducer, but it does not itself sense it in any way -- all it does is reflect it to the detector, which does not move. Since Black discloses a stationary detector that senses the frequency of the electromagnetic radiation, Black meets a reasonable interpretation of the claim language. Therefore this argument is not persuasive.